

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1347 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
29/07/2004 in WP No. 13272 of 2004 on the file of the High Court.)

Between:

1. Boya @ Mekala Brahmaiah S/o. Late Madanna
Hosur Village, Pattikonda Mandal, Kurnool District.
2. Ulveni Ramakriahna S/o. Venkata Ramudu
Hosur Village, Pattikonda Mandal, Kurnool District.
3. Bangani Lakshmi Narayana S/o. Chinna Ramanna
Hosur Village, Pattikonda Mandal, Kurnool District.

..... APPELLANTS

AND

1. The District Collector (Panchayat Raj Wing) Kurnool, Kurnool District.
2. The Panchayat Secretary, Hosur Grampanchayat, Hosur Vill,
Pattikonda Mandal, Kurnool District.
3. The Sarpanch, Hosur Grampanchayat,
Pattikonda Mandal, Kurnool District.

.....RESPONDENTS

Counsel for the Appellant: Mr.R.RAMANJANEYULU

Counsel for the Respondents: G.P. for Panchayat Raj

The Court made the following :

ORAL JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Action of the Gram Panchayat in asking the appellant to vacate the site, which according to 3rd respondent, belongs to it, was questioned by the appellant by filing the Writ Petition, which was dismissed by the learned Single Judge saying that the notice itself is sufficient one and is not arbitrary.

We have perused the translated copy of Notice, which reads:

“ Grama Panchayat Notice

It is hereby informed that you Makala Brahmaiah s/o Madanna, occupied Vennurappa Katta which is Hosur Grama Panchayat place near Gramapanchayat office and running supplies and vegetable shops The Grama Panchayat passed a resolution No.1, dated: 8.7.2004 and resolved to vacate you from that place within 15 days i.e. on or before 28.7.2004.

Please take notice that you should vacate the above said place within the said time by vacating the suppliers and vegetable shops and hand over the same to the gram panchayat, failing which action would be taken as per law, if any expenses incurred for that purpose, the same will be recovered from you through court.

Secretary

Gram Panchayat, Hosur.”

On the face of the aforementioned notice, it requires the appellant to vacate the place in his occupation in which, admittedly, he has been running vegetable shop. This notice was not preceded by any other show-cause notice calling upon the petitioner to show cause why he should not be evicted from the site in question.

Section 98 of the Andhra Pradesh Panchayat Raj Act is the proviso which authorized the Gram Panchayat requiring the owner or occupier to remove or alter any projection. It reads:

“98. Removal of encroachments:-

(1) The executive authority may, by notice, require the owner or occupier of any building to remove or alter any projection, encroachment or obstruction other than a door, gate, bar or ground floor window, situated against or in front of such building and in or over any public road vested in such gram panchayat.

(2) If the owner or occupier of the building proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any local authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the gram panchayat shall make reasonable compensation to every person who suffers damages by the removal or alteration of the same.”

Notice served upon the appellant nowhere says that appellant is an encroacher. Notice also does not say that appellant has contravened any of the provisions of the law or that in case he is a licensee, his licence has expired, and, that, in case, he is a lessee, his lease has been terminated. At this stage, we do not go into the question as to whether pursuant to the notice in question, the Gram Panchayat has or has not taken any action, since the very notice served upon the appellant is in violation of the Principles of Natural Justice. We have no option, except, to allow the appeal, and set aside the notice impugned in the Writ Petition, thereby reserving liberty to the Gram panchayat to first issue appropriate show cause notice calling upon the appellant to show cause as to why he should not be evicted from the site in question by allowing him reasonable time to submit his case before the Gram Panchayat, and then take appropriate decision thereupon. Needless to add that if the appellant feels aggrieved by the decision to be taken, he can avail of the remedy in accordance with law for redressal of his grievance.

With leave and liberty granted to the Gram Panchayat, Writ Appeal is allowed and order impugned in the Writ Petition is set aside. No costs.

DEVINDER GUPTA, C.J.

14.09.2004.

C.V.RAMULU, J.

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To

1. The District Collector (Panchayat Raj Wing) Kurnool, Kurnool District.
2. The Panchayat Secretary, Hosur Grampanchayat, Hosur Vill,
Pattikonda Mandal, Kurnool District.
- 3.The Sarpanch, Hosur Grampanchayat,
Pattikonda Mandal, Kurnool District.
4. Two CCs to Govt. Pleader for Panchayat Raj, High Court Buildings, Hyderabad
(OUT).
5. Two CD copies.